

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2465 of 1999

with

SPECIAL CIVIL APPLICATION No 3296 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

GSRTC

Versus

MOHANBHAI TRIBHOVANDAS PATEL

Appearance:

1. Special Civil Application No. 2465 of 1999
MR HARDIK C RAWAL for Petitioner
MR JS BRAHMBHATT for Respondent No. 1
2. Special Civil ApplicationNo 3296 of 1999
MR JS BRAHMBHATT for Petitioner

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/07/1999

ORAL JUDGEMENT

1. These two writ petitions challenging the same Award can conveniently be disposed of by common Judgment.

2. Brief fact giving rise to these petitions are as under :

The respondent in Special Civil Application No.2465/99 and the petitioner in Special Civil Application No.3296/99 was working as Conductor at Dabhoi Depot. There was allegation against him that he remained unauthorisely absent from 14.1.1995 to 12.3.1995. During this period of about 2 months he submitted three Leave Reports and all the times he stated that he was ill, but no Medical Certificate was filed in support of his three Leave Applications. Belated Certificate submitted by the Conductor did not indicate and disclose that he was hospitalised as Indoor patient. For this unauthorised absence charge sheet was given and departmental inquiry was conducted. Adequate opportunity of hearing was given to the Bus Conductor, viz. delinquent employee. The charges were found established against delinquent employee and as such he was dismissed by order dated 30.3.1995. This order was challenged by the dismissed employee before the Labour Court through Reference. The Presiding Officer of the Labour Court passed an Award on 9.12.1998 setting aside the order of dismissal and passing order of reinstatement with no backwages. This Award has been challenged by the Gujarat State Road Transport Corporation in so far as it directs reinstatement of the employee. The employee has challenged this Award on the ground that once the reinstatement was ordered backwages should also have been granted.

3. Having heard the learned Counsel for the parties and perusing the two writ petitions and the Award it is clear that the charge of unauthorised absence of the employee from 14.1.1995 to 22.3.1995 was duly proved. The inquiry proceedings were not challenged. The legality of the Inquiry proceedings were also not challenged by the employee. Findings recorded during inquiry were recorded after observing principles of natural justice and affording opportunity of hearing to the delinquent employee. The findings recorded during inquiry cannot be said to be perverse. The Labour Court also observed that the charges were established and the inquiry was not vitiated for non-observance of principles of natural justice. It was, however, of the opinion that looking to the nature of charge, namely, unauthorised absence for a period of two months penalty of dismissal from service was disproportionate to the guilt

established against the employe and as such the order of dismissal was quashed. However, keeping in view the fact that the employee absented unauthorisedly and did not furnish satisfactory proof of illness he was not entitled to backwages.

4. The view taken by the Labour Court, in my opinion, does not suffer from any legal infirmity or factual perversity. If the Award is neither illegal nor perverse interference in exercising jurisdiction under Article 226 is hardly desirable.

5. For the reasons stated above both the writ petitions have no merit. Accordingly both the writ petitions are dismissed. No order as to costs.

sd/-

Date : July 22, 1999 (D. C. Srivastava, J.)

sas